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FLEXIBLE HOURS IN THE FEDERAL SERVICE

SEPTEMBER 11, 1974.—Ordered to be printed

Mr. MCGEE, from the Committee on Post Office and Civil Service, submitted the following

REPORT

[To accompany S. 2022]

The Committee on Post Office and Civil Service, to which was referred the bill (S. 2022) To provide increased employment opportunity by Executive agencies of the United States Government for persons unable to work standard working hours, and for other purposes, having considered the same, reports favorably thereon with amendments and recommends that the bill as amended do pass.

PURPOSE

The purpose of S. 2022 is to direct the U.S. Civil Service Commission to formulate, implement, and thereafter supervise a program to assist executive agencies in carrying out a policy to meet the needs of persons unable to work standard working hours. Progress in this direction has already been made, and the Committee wishes to encourage movement in this direction through the legislative process.

BACKGROUND

S. 2022 was introduced by Senator John V. Tunney on June 19, 1973. At a hearing on September 26, 1973, the Committee heard from Members of Congress; the President of Catalyst, a group supported by the Kellogg, Ford, Mellon and Rockefeller Foundations for the purpose of encouraging flexible hours employment; a representative of a national Federal employee organization; and a representative on the Civil Service Commission. The Committee also obtained, by report, the views of the Civil Service Commission, the Comptroller General, the Postal Service, and the Department of Labor and, by letter, the views of the American Federation of Government Employees, the

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American Postal Workers Union, the National Association of Letter Carriers, and the Laborers' International Union of North America.

S. 2022 is cosponsored by 24 Members of the Senate, including five Members of the Committee, Senators Bellmon, Dole, Hollings, Randolph, Moss, and Stevens. On July 9, 1974, the Honorable Francis Sargent, Governor, Commonwealth of Massachusetts, signed into law H. 3167, An Act of the General Court of Massachusetts, the primary provisions of which are substantively identical to those of S. 2022.

Background

Part-time employment benefits many groups; women and men who cannot or choose not to work full-time; handicapped people who cannot bear the strains of a long day or cannot handle rush hour traffic; students and individuals undergoing retraining who must be partially or totally self-supporting while in school; and experienced, trained employees who may prefer continuing to work part-time to taking advantage of early retirement. By providing part-time employment opportunities, the Government benefits from a wider talent pool and the experience of older employees.

With six million women in this country with Bachelor of Arts or higher advanced degrees and another nine million who have had some higher education, the talent pool of women is considerable. Part-time employment allows a woman to meet her family responsibilities and, at the same time, pursue a career. The part-time job permits a woman to be with her children when they are pre-schoolers and after school hours during elementary and high school years. By offering part-time jobs, Government agencies will be better able to comply with Federal regulations on equal employment opportunities for women at all levels of responsibility.

The need for increased part-time job opportunities for women is all the more acute since the number of part-time workers is increasing faster than the number of full-time. Between 1950 and 1966, the full-time labor force increased by 20 percent, from 58 to 70 million, while the number of part-time workers increased more than 49 percent, from 10.7 to 18 million.

In 1967, the Bureau of Labor Statistics estimated that by 1980 one worker out of ever seven would be part-time. But the rate of increase in part-time workers has been so great that this figure was reached by the end of 1972 when more than 12.5 million American workers were employed part time.

While the size of the part-time labor force is increasing, the largest employer—the Federal government—has not adequately provided for bringing part-timers into the work force. Including permanent, temporary, and intermittent employees, only 184,358 Federal employees are part-time; less than half of these women. Permanent part-time employees number only 53,684; 25,786 men and 27,898 women.

S. 2022 sets goals for part-time employment so that at least a certain percentage of the positions at each and all levels in all executive agencies shall be available on a flexible-hours employment basis for persons who cannot work or do not desire to work on a full-time basis. The establishment of goals is an established Government policy. The Civil

Service Commission's FPM Letter 713–22, October 4, 1973, provided guidelines for a format for submission of Equal Employment Opportunity (EEO) plans. Section 2(g) states:

> The establishment of numerical goals and timetables is a useful management concept that can significantly enhance EEO plans where the use of such goals will contribute to the resolution of equal employment opportunity levels.

Provisions of the Bill

FLEXIBLE HOURS EMPLOYMENT

S. 2022 encourages flexible hours employment in positions at all grades in executive agencies, including both statutory and Wage Grade positions, but excluding positions in grades GS–16, GS–17, and GS–18. "Flexible hours employment" means employment in positions which normally require at least 16 hours but not more than 30 hours of work per week and includes arrangements involving job sharing, 4-, 5-, or 6-day workdays, jobs which provide 8 hours of employment or less for one, two, three, four, or five days per week and such other arrangements which the Civil Service Commission and the executive agencies find consistent with the maximum provision of employment opportunity to persons unable to work a standard workweek. The bill covers Executive agencies and regulatory agencies subject to the rules of the Civil Service Commission.

FLEXIBLE HOURS EMPLOYMENT TARGETS

It is the Committee's intention that the creation of flexible-hours employment opportunities be undertaken in a gradual fashion which provides maximum protection for the rights, benefits and employment of Federal employees. Accordingly, the bill provides for a gradual phase-in of flexible hours employment, so that, at the end of one year from the date of enactment, unless as otherwise provided in the bill, 2 percent of positions at each level shall be made available on a flexible-hours basis, at the end of 2 years, 4 percent of positions shall be made available on such a basis, at the end of 3 years, 6 percent of positions shall be made available on such a basis, at the end of 4 years, 8 percent of positions shall be made available on such a basis, and at the end of 5 years and for all years thereafter, 10 percent of such positions shall be made available on such a basis.

The term "grade" as used in the bill refers to General Schedule or Wage Grade level. The percentage amount relating to "positions at each grade" refers to the proportion of positions at each grade, except the supergrades, in each executive agency which shall be made available for adaptation to the requirements of flexible-hours employment.

The percentage amounts described in the bill are target rather than rigid quota levels. In some instances, agencies may find that flexible-hours employment is highly suited to their operational requirements and will make the maximum possible use of part-time employment. The Committee recognizes also that the interests of Federal employees and the Government's operational necessities must be protected. The

bill therefore provides a mechanism by which an agency may be partially or fully relieved of its obligation to provide flexible-hours employment in cases where these interests would otherwise be seriously threatened.

PROCEDURE FOR REDUCTION OR WAIVER OF FLEXIBLE-HOURS EMPLOYMENT TARGETS

The Committee recognizes that it may not be possible to provide flexible-hours employment opportunities in any given year at any given level in an executive agency. The bill therefore provides that an agency may request and that the Civil Service Commission may grant, for a period of one year, a reduction or waiver of the percentage amount. The Commission may grant such a reduction or waiver 60 days after publication in the Federal Register of notice of the request for a reduction or waiver and of the reasons and justification for that request. The Commission may grant a reduction or waiver only if the agency demonstrates to the Commission that partial or full compliance with the percentage requirement for those positions for that year by such agency would be substantially disruptive of the ability of the agency to perform its mission.

The bill provides that the Commission shall make available for public inspection a written statement of the facts and logic which provide the basis for its decisions on requests for reductions or waivers. The Committee expects that, in considering such requests, the Commission will afford all interested parties 60 days for the opportunity to comment and that the Commission will carefully examine each request on its individual merits. Upon enactment, the Commission should develop and publish in the Federal Register objective criteria for use in evaluation of requests for reduction or waiver.

The Committee expects that the Commission will carefully balance the national interest in the promotion of flexible-hours employment with the need to protect the employment rights and interests of Federal employees and the need to provide continuous staffing of certain positions in certain agencies. The circumstances under which partial or full compliance with the percentage amounts would be substantially disruptive of the ability of an agency to perform its mission should include, but not be limited to, situations in which an agency is undergoing a substantial reduction in force, a freeze on new hiring or other major personnel action which so adversely affects the status of Federal employees in that agency as to make it impossible to adapt to the requirements of flexible-hours employment without seriously jeopardizing the employment or employment rights or benefits of Federal employees in that agency.

IMPLEMENTATION AND OVERSIGHT

The bill provides for the implementation of the public policy as expressed in the bill by the executive agencies with the advice and assistance of the Civil Service Commission. Periodic reporting by the agencies to the Commission and by the Commission to the Congress would be required on measures taken to implement the policy, on the extent to which the goals of the policy are attained, on any impedi-

ments to implementation of the policy and on measures taken to remove any such impediments. Finally, the bill directs the Commission to conduct research and experimentation projects and other activities which will serve to promote, in public employment, the advancement of opportunities for persons unable to work standard working hours.

The Committee expects that, in addition to implementing the policy expressed in the bill, the Commission will give maximum encouragement to the use of other forms of flexible work scheduling, including the use of variable starting and finishing hours of work.

PROTECTION OF FEDERAL EMPLOYEES

The bill would prohibit any Federal employee from being forced to accept flexible-hours employment as a condition of new or continued employment. It also provides that nothing in the bill would jeopardize the employment or employment rights or benefits of any Federal full-time employee. The gradual phase-in of flexible-hours employment opportunities is designed to protect Federal employees by providing such opportunities under the umbrella of the flexibility afforded by normal attrition. In those specific cases where an agency is undergoing a substantial reduction in force, a freeze on new hiring, or other major personnel action which so adversely affects the status of agency employees as to make it impossible to adapt to the bill's requirements without seriously jeopardizing the employment or employment rights or benefits of employees in that agency, the Committee expects that the Commission will grant a partial reduction in or waiver of the requirements if the Commission finds that such a reduction or waiver is essential to the preservation of the continued employment or the employment rights or benefits of employees in a particular agency.

OTHER PROVISIONS

The bill provides that flexible-hours employees would have entitlement to the same proportionate fringe benefits as those vested in regular-hours employees. An exception to this general rule, regarding retirement creditability, is described below under "Amendments".

The bill provides also that, for purposes of counting persons employed in flexible-hours employment positions toward agency personnel ceilings, such persons must be counted on a pro-rata basis according to the percentage of hours each person works in a typical forty-hour workweek.

The bill provides that no agency shall contract out work as a result of the provisions of this bill, except for the purpose of obtaining advice and assistance needed to meet the requirements of the program.

The bill does not apply in the case of positions occupied by Federal employees with respect to whom a collective-bargaining agreement is in effect between an agency and a labor organization as of the date of enactment. The exemption is limited to those positions occupied by employees for whom the weekly number of hours of employment is determined, as of the date of enactment, by collective-bargaining agreements rather than by statute. Experts, consultants and others employed by any employer other than an executive agency may not be

counted for the purpose of determining compliance with the policy of this bill.

AMENDMENTS

The bill as introduced included within its definition of "executive agency" the Postal Service. The bill as reported excludes the Postal Service from the definition of "executive agency".

The bill as introduced contained no limit on the number of hours per workweek consistent with the concept of flexible-hours employment and no reference to job sharing as an arrangement consistent with the concept of flexible-hours employment. The bill as reported would limit flexible-hours employment to positions of at least 16 hours but not more than 30 hours per week. It would include job sharing among those arrangements consistent with the concept of flexible-hours employment.

The bill as introduced vested enforcement, oversight, and research responsibilities in the Department of Labor. The bill as reported places these responsibilities with the Civil Service Commission.

The bill as introduced allowed the Secretary of Labor to waive the target percentage requirements if he found those requirements impossible of accomplishment. The bill as reported eliminates this provision and substitutes a provision that the Civil Service Commission may, under clearly defined conditions, waive the percentage requirements.

The bill as introduced was silent on the rights of Federal employees with respect to enforcement of this bill, on contracting out of work by agencies in connection with this bill and on coverage of positions in which the number of hours of employment in a week is determined by collective-bargaining agreement rather than by statute. The bill as reported fully ensures the protection of Federal employees, severely limits the contracting out of work by agencies in connection with this bill, and excludes from coverage positions in which the number of hours of employment in a week is determined by an existing collective-bargaining agreement rather than by statute.

As introduced, the bill provided that "at least a certain percentage of all positions in each grade in each agency" shall be available on a flexible-hours basis. The bill as reported excludes grades GS–16, GS–17, and GS 18 from the definition of "grade". The Committee took this action because it believed it would be extremely difficult to administer a program in which flexible-hours positions were required to be included among the supergrades.

The bill as introduced would have allowed time on the job as a flexible-hours employee to be counted, without reduction, in the annuity-computation formula. This would have allowed a part-time employee to work as such for a number of years, transfer to a full-time position to increase the high-three average salary and retire on a disproportionately high annuity in which each month of flexible-hours employment was credited as though the employee had worked full time. The Committee amended the bill by the inclusion of language to allow credit toward a full month's employment only for those hours actually worked. Full-time employees work 2,080 hours per year, or 173 hours per month. Under the amended bill, a flexible-hours employee would be credited with one month toward retirement when he has actually worked 173 hours.

The bill as introduced did not address itself to the order of retention in a reduction in force. Section 3502 of title 5 provides that the Civil Service Commission shall prescribe regulations for the release of competing employees in a reduction in force which gives due effect to (1) tenure of employment, (2) military preference, (3) length of service, and (4) efficiency or performance. The Committee has amended this section to include a fifth consideration: "employment on a full-time basis (other than on a temporary or seasonal full-time basis)". This means that an employee's status as a full-time employee, other than temporary or seasonal, will be taken into account by Civil Service Commission regulations when a reduction-in-force is undertaken.

Cost

Enactment of this legislation will not result in any additional cost to the Government. Experience in the Federal Government and in the private sector clearly indicates that less-than-full time employment generally results in such increased productivity that the minor additional administrative expenses that may be incurred are more than fully offset.

Committee Action

The Committee vote on the bill as amended was unamimous.

Agency Views

Following are the views of the Civil Service Commission, the Department of Labor, the Postal Service, and the Comptroller General of the United States on S. 2022.

U.S. Civil Service Commission,
Washington, D.C., September 25, 1973.

Hon. Gale W. McGee,
Chairman, Committee on Post Office and Civil Service,
U.S. Senate.

Dear Mr. Chairman: This is in further reply to your request for the views of the Civil Service Commission on S. 2022, a bill "To provide increased employment opportunity by executive agencies of the United States Government for persons unable to work standard working hours, and for other purposes".

While we agree with the general purpose of creating as many part-time employment opportunities as possible, the Commission is opposed to this bill.

It is our view that legislation to accomplish the basic objective of the proposal is neither necessary nor desirable. There is now available administrative flexibility that enables Federal executive agencies to employ workers on a part-time basis. This flexibility has been used by agencies for many years to provide employment opportunities for those workers unable to work full-time and also carry out essential functions and workload demands that lend themselves to accomplishment by part-time workers. For example, the Department of Health, Education, and Welfare employs about 2,300 part-time workers and the Department of Agriculture has about 2,100 employees in this same category. The Veterans Administration has some 11,500 part-time workers.

In addition to the fact that legislation is not necessary, we object to the proposal because it would require that a fixed percentage of positions at each and all levels in all executive agencies be set aside for part-time work. This is impractical and would produce many problems. The requirement does not take account of the amount and type of work to be done and would be imposed whether or not such work could best be accomplished by part-time employees. In effect, the bill would severely impair an agency head's ability to manage.

The bill would require that some jobs now filled on a full-time basis be converted eventually to part-time. This would be more costly because of additional overhead expenses and would result in inefficient operations in some work situations. We seriously question whether these undesirable, and unnecessary results are in the public interest.

The proposed employment system also ignores the fact that large blocks of Federal jobs do not lend themselves to being filled on a part-time basis. By way of example, these would include: most supervisory and managerial positions; jobs that require continuity; jobs for which training costs are high and could be prohibitive; for part-time employment; those requiring frequent or extensive travel; and most investigative positions.

Labor market conditions, and fluctuations in labor market conditions completely beyond the control of the Federal government, would in our judgment make it impossible to hire enough well qualified employees in some types of jobs to meet the employment requirements of the bill. Examples of these are: many blue collar and trades positions, especially in areas of highly concentrated blue collar employment; jobs such as Air Traffic Controller, Border Patrol Officer, Park Ranger, and Forester which require specialized experience not readily found among candidates willing to work part-time.

We object also to that feature of the bill which designates the Secretary of Labor as the official responsible for its administration. The Civil Service Commission has general responsibility for employment policies and programs within the Federal government. To the extent that legislation is needed in this program area, and it is not in this instance, the Civil Service Commission should be charged with administrative responsibility.

In conclusion, it should be noted that the Commission encourages agencies to use a variety of techniques, including part-time work assignments, to provide employment for women and men whose family or other personal responsibilities do not permit full-time employment. While the Commission agrees with the general purpose of the bill as stated, we cannot agree with the establishment of this type of arbitrary numerical employment standard.

The Office of Management and Budget advises that from the standpoint of the administration's program there is no objection to the submission of this report.

By direction of the Commission:

Sincerely yours,

ROBERT E. HAMPTON, *Chairman.*

U. S. DEPARTMENT OF LABOR,
OFFICE OF THE SECRETARY,
Washington, November 16, 1973.

Hon. GALE W. MCGEE,
Chairman, Committee on Post Office and Civil Service, U.S. Senate,
Washington, D.C.

DEAR MR. CHAIRMAN: This is in response to your request for the Department of Labor's views on S. 2022, the Flexible Hours Employment Act, a bill "To provide increased employment opportunity by executive agencies of the United States Government for persons unable to work standard working hours, and for other purposes."

S. 2022 would provide that a fixed quota of part-time positions be set aside in an "executive agency" and would provide that part-time employees, on a pro rata basis, receive all benefits normally available to full-time employees in a similar position or grade. Such employment would not be counted towards determining an executive agency's personnel ceiling requirements, other than on a pro rata basis. Section 3 of the bill would authorize the Secretary of Labor to conduct research and experimentation projects to promote part-time employment in the public and private sector. The bill would impose fixed percentages, starting at 2% and rising to 10% after five years of positions to be filled on a part-time basis at each and all levels in the Departments and Agencies. The bill is designed to increase employment opportunities for working mothers, students, older persons, and the handicapped. Although we support these objectives, we do not believe that legislation is necessary to accomplish them, and accordingly, we cannot support S. 2022.

With respect to administration of the Act, we question first the requirement that the Department of Labor be responsible for administering the program. The matter of hours of work in the Federal Service is clearly within the sphere of responsibility of the Civil Service Commission.

We believe it is unrealistic and unwise to require that a fixed minimum number or percentage of positions be reserved for employment on a flexible hours of employment basis. Such a requirement impinges upon the Agency Head's responsibility for management and fails to reflect the fact that the proportion of jobs amenable to part-time performance will vary among agencies.

The Department does not believe that new legislation is needed for research projects contemplated by section 3. There is adequate authority and flexibility under present law for such projects, and it is already the official policy of the Executive Branch to promote increased use of part-time employment where appropriate.

Indeed, the Department of Labor plans to undertake a study of jobs and functions within our agency such as that envisioned by section 3 of the bill. Some part-time work at both clerical and professional levels is available under current law, and we expect that further investigation will show that it is possible to draw more effectively on highly qualified personnel available on a part-time basis. Moreover, the Department will explore ways of increasing part-time job oppor-

tunities in the private sector under the various programs we administer.

The Office of Management and Budget advises that there is no objection to submission of this report from the standpoint of the Administration's program.

Sincerely,

PETER J. BRENNAN,
Secretary of Labor.

U.S. POSTAL SERVICE,
LAW DEPARTMENT,
Washington, D.C., September 25, 1973.

HON. GALE W. MCGEE,
Chairman, Committee on Post Office and Civil Service, U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: This is in response to your request for the views of the Postal Service on S. 2022, the proposed "Flexible Hours Employment Act". This bill would require each executive agency of the United States Government, including the United States Postal Service, to make an increasing percentage of positions available on a part-time basis for persons who cannot work or do not desire to work full time.

We oppose the application of this bill to the Postal Service, because it would interfer with collective bargaining between postal management and organizations of postal employees.

In general, the Postal Reorganization Act patterned labor-management relations in the Postal Service after those existing in the private sector of the economy under the National Labor Relations Act. Chapter 12, title 39, United States Code, provides for the establishment and recognition of bargaining units of postal employees and for the negotiation of collective-bargaining agreements between these bargaining units and postal management. Moreover, Congress expressed an intent that postal collective bargaining should cover the full gamut of issues negotiated by labor and management in the private sector of the economy. In its report on the Postal Reorganization Act, the House Committee on Post Office and Civil Service said:

> * * * Rank and file postal employees would, for the first time, have a statutory right to organize collectively and to bargain collectively with management on all of those matters—including wages and hours—which their neighbors in private industry have long been able to bargain for.
> H.R. Rept. No. 91–1104, 91st Cong., 2d Sess., 13–14 (1970).

The employment of part-time workers has long been a matter for negotiation in private labor relations, because such workers often occupy jobs which might otherwise be filled by union members employed on a permanent basis. Similarly, both postal unions and postal management have taken aggresive bargaining positions on what number of part-time postal workers should be hired and what positions they should fill. The current contract provisions, achieved as a compromise between union and management views, direct that 90% of postal craft employees must be hired on a full-time permanent basis.

We feel that it would be entirely inconsistent with the legislative purposes of the Postal Reorganization Act to restrict the scope of the issue of part-time employment as a subject for collective bargaining in the Postal Service. Although the policies that would be established by S. 2022 may be commendable, we would oppose their application to the Postal Service unless a decision is made to make such policies applicable to employees in the private sector who bargain with their employees. Accordingly, we oppose the enactment of S. 2022, in its present form, and urge that it be amended so as to make it inapplicable to the Postal Service.

Sincerely,

LEWIS J. COX,
General Counsel.

COMPTROLLER GENERAL OF THE UNITED STATES,
Washington, D.C., September 11, 1973.

Hon. GALE W. MCGEE,
Chairman, Committee on Post Office and Civil Service, U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: We refer to your letter of June 29, 1973, requesting our views and comments on S. 2022, 93d Congress, which, if enacted, would provide increased employment opportunity within executive agencies of the United States Government for persons unable or not wishing to work standard working hours and would be cited as the "Flexible Hours Employment Act."

Section 1(1) of the bill defines "executive agency" as an executive department, a Government corporation and an independent establishment (including the United States Postal Service) apparently in accordance with those terms as set forth in sections 101, 103 and 104 of title 5, United States Code. Presumably the military departments as defined in section 102, *supra*, are also intended to be encompassed within the scope of the bill. To remove any doubt in this respect you may wish to specifically include a military department in the term "executive agency" as defined in section 1(1) of the bill.

Section 2(a) of the bill proposes as a policy that all executive agencies shall make positions available at each and all levels on a flexible hours or part-time employment basis for persons who cannot or do not desire to work full time "unless adjudged impossible" by the Secretary of Labor. The bill requires that these positions be made available in annual increments of at least 2 per centum of positions at each and all levels starting one year after enactment until 10 per centum of such positions shall have been made available for flexible hours employment not later than 5 years after the date of enactment.

Responsibility for monitoring achievement of part-time employment goals required by the bill would be assigned to the Secretary of Labor. Each agency would report quarterly to the Secretary on progress made on the program and the Secretary would be required to report annually to Congress on efforts undertaken to meet the percentage goals and reasons for failure to do so where pertinent.

The existing law governing hours of work for Government employees is contained in section 6101 of title 5, U.S.C., and reads in pertinent part as follows:

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§ *6101. Basic 40-hour workweek; work schedules, regulations*

(a)(1) For the purpose of this subsection, 'employee' includes an individual employed by the government of the District of Columbia, but does not include an employee or individual excluded from the definition of employee in section 5541(2) of this title.

(2) The head of each Executive agency, military department, and of the government of the District of Columbia shall—

(A) establish a basic administrative workweek of 40 hours for each full-time employee in his organization; and

(B) require that the hours of work within that workweek be performed within a period of not more than 6 of any 7 consecutive days.

(3) Except when the head of an Executive agency, a military department or of the government of the District of Columbia determines that his organization would be seriously handicapped in carrying out its functions or that costs would be substantially increased, he shall provide, with respect to each employee in his organization, that—

(A) assignments to tours of duty are scheduled in advance over periods of not less than 1 week;

(B) the basic 40-hour workweek is scheduled on 5 days, Monday through Friday when possible, and the 2 days outside the basic workweek are consecutive;

(C) the working hours in each day in the basic workweek are the same;

(D) the basic nonovertime workday may not exceed 8 hours.

* * * * * * *

(d) The Civil Service Commission may prescribe regulations, subject to the approval of the President, necessary for the administration of this section insofar as this section affects employees in or under an Executive agency.

The above-quoted statute provides for a 40-hour administrative workweek, consisting of 5 eight-hour days, normally running from Monday through Friday. However, the law does not make it a mandatory requirement that every employee work 40 hours per week. The Civil Service Commission (CSC) in implementing the aforementioned statute has made provisions for a workweek of less than 40 hours for part-time employees by defining "Regularly Scheduled Administrative Workweek" in 5 CFR 610.102(b) as follows:

(b) "Regularly scheduled administrative workweek," for full-time employees, means the period within an administrative workweek, established in accordance with § 610.111, within which these employees are required to be on duty regularly. For part-time employees, it means the officially prescribed days and hours within an administrative workweek during which these employees are required to be on duty regularly.

It is the policy of the Federal Government to encourage appropriate part-time employment as expressed in section B–4, Appendix B, Chapter 312, of the Federal Personnel Manual:

B–4. Fostering appropriate part-time employment

The Office of Management and Budget and the Civil Service Commission have strongly urged that Government agencies make employment available to women who can work only part-time; to the physically handicapped, some of whom cannot work full time; to persons who want to work only part-time because of their desire to continue their education; and to other appropriate categories. If executive agencies wish to move along similar lines, they will find the Office of Management and Budget administers the ceilings in a way that permits and encourages the kind of flexibility that results in improved efficiency and productivity.

We have no information as to the desirability of assigning to the Secretary of Labor the responsibility for formulating, implementing and supervising a program to assist executive agencies in carrying out the flexible hours employment policy as required by section 2. However, in view of the statutory authority of the CSC to regulate hours of work cited above it would appear that the responsibilities assigned to the Secretary of Labor by the bill may duplicate or conflict with those of the CSC. Also for consideration are the broad authorities delegated to the CSC to administer the Civil Service System in such areas as (1) employment and retention of employees under chapter 31 of title 5, U.S.C., and Executive orders implementing these statutes; and (2) examination, selection and placement of employees under chapter 33 of title 5, *supra*, and Executive orders implementing these statutes; and (3) pay and allowances of employees and classification of positions under chapter 51 of title 5, *supra*. In light of authority already exercised by the CSC, it would seem more appropriate to place the responsibilities imposed by the bill in the CSC or jointly in the CSC and the Secretary of Labor.

Section 3 of the bill assigns responsibility for administration of its provisions specifically to the Employment Standards Administration or a similar organizational unit of the Department of Labor. In addition to the program for designating certain percentages of Government positions as part time the bill also requires the Employment Standards Administration to develop programs to expand opportunities for part-time employment in private industry. With respect to this provision we suggest that such a statutory designation may unduly limit administrative flexibility and that the determination as to the organizational unit best suited to execute the program should be left to the judgment of the Secretary.

Section 5 of the bill provides that employees in flexible hours employment positions shall receive on a pro rata basis "all benefits normally available to full-time employees of executive agencies in similar position and grade." However, the bill does not specify with particularity just what these benefits are, and neither does it specifically vest authority in any designated agency to regulate such benefits. Under existing law the CSC has been delegated the responsibility of regulating in most fringe benefit areas including authority to exclude from such benefits certain classes of employees. For example, specific authority has been delegated to the CSC to regulate such entitlements as leave in 5 U.S.C. 6311; retirement, 5 U.S.C. 8347; life insurance,

5 U.S.C. 8716; health insurance, 5 U.S.C. 8913; severance pay, 5 U.S.C. 5595 as implemented by Executive Order 11257; and back pay, 5596(c). Therefore, in order to avoid conflicts in jurisdiction, we suggest the bill be amended so that the fringe benefits authorized for employees covered thereunder will be granted under regulations of the CSC or such other agency as presently has jurisdiction of the particular benefit involved.

Section 6 of the bill proposes that agencies count an employee employed in a flexible hours position for purposes of personnel ceiling requirements on a pro rata basis according to the percentage of hours such employee works in each 40-hour workweek. The existing Office of Management and Budget policy with respect to agency personnel ceiling requirements on counting part-time employees is set forth in sections B–2 and B–3, Appendix B to Chapter 312, Federal Personnel Manual, 1969 edition, as follows:

B–2. Ceilings as controls

(*a*) Two kinds of ceilings are established. These are (1) full-time permanent employment and (2) total employment. By subtracting (1) from (2) the difference, called a 'derived ceiling', becomes, in effect, a limitation on the number of part-time, temporary, and intermittent employees. Since all ceilings apply to the last day of each fiscal year, June 30, the agencies have flexibility in applying these ceilings, within the year, particularly with respect to the nonfull-time employment.

(*b*) All employment is subject either to the actual full-time employment ceiling or to the derived ceiling. All employees in each category of employment must be included in the monthly employment reports which are furnished to the Congress and which the Committees of the Congress, the President, and the Office of Management and Budget use to monitor administration of the ceiling requirements.

(*c*) Most agencies understand clearly how requests for revisions in employment ceilings must be submitted to the Office of Management and Budget and what thorough justification must be advanced to support an asserted need for additional employment. (See OMB Circular A–64 and its revisions.) Misunderstanding has, however, arisen from time to time with respect to part-time employment.

(*d*) For purposes of this discussion, a part-time employee, regardless of the nature of his or her employment, is one who works less than 40 hours a week. The employment may be regular and recurring (loosely referred to as 'permanent'); it may be for a temporary period; or it may be intermittent in the sense that the person works only when called in, but it is still the kind of employment which is subject to the derived ceiling.

B–3. Ceiling spaces to meet needs for part-time employees

(*a*) The Office of Management and Budget states that if persons seeking regular, permanent, part-time jobs have been told that it is impossible to offer this kind of employment because each position of this kind must be charged against the full-time permanent ceiling, they have been incorrectly advised. The first course of action that an

agency should always explore is to determine whether the assigned total employment ceilings are large enough to accommodate a desired part-time program. Part-time employees can be hired against vacancies in the derived ceiling as well as against vacancies in the full-time permanent ceiling. These hirings against vacancies can be carried out without recourse to the Office of Management and Budget.

(*b*) If however, the derived ceiling is not high enough to meet an agency's legitimate needs for part-time employment, an attempt should be made to accommodate the part-time employee within the full-time permanent ceiling. If this accommodation is not possible, an application to the Office of Management and Budget for the conversion of spaces from the full-time permanent ceiling to the derived ceiling to permit splitting full-time jobs "would normally receive favorable consideration upon request." In other words, the application of the ceiling need not always force an agency to count a part-time employee as the equivalent of a full-time employee or reduce the total man-hours of employment available to an agency."

We believe that a rigid designation of prescribed percentages of each and *all levels* of positions in the executive branch of the Government as flexible hours positions would prove to be an administratively impractical approach to the objectives of insuring that professional, technical, clerical, supervisory and support positions are freely available to part-time workers. We note that as of April 30, 1973, there were 2,732,023 positions in the executive branch of the Government (Federal Civilian Manpower Statistics, United States Civil Service Commission, June 1973), of which 2,432,350 were permanent full-time positions and 129,322 were part-time, regularly scheduled positions. Since the numbers and grade levels of this magnitude of positions located in all 50 states and numerous foreign countries is subject to constant variation we believe it is not feasible to require, as S. 2022 proposes, that at all times a specified percentage of each level of all positions be designated and set aside for part-time employment.

Sincerely yours,

PAUL G. DEMBLING,
(*For the Comptroller General of the United States*).

CHANGES IN EXISTING LAW

In compliance with subsection 4 of rule XXIX of the Standing Rules of the Senate, changes in existnig law made by the bill as reported are shown as follows (existing law in which no change is proposed is shown in roman; existing law proposed to be omitted is enclosed in black brackets; new matter is shown in italic):

TITLE 5, UNITED STATES CODE

PART III—EMPLOYEES

SUBPART A—GENERAL PROVISIONS

Chapter	Section
21—Definitions	2101
29—Commissions, Oaths, Records, and Reports	2901

SUBPART B—EMPLOYMENT AND RETENTION

Chapter	Section
31—Authority for Employment	3101
32—Flexible Hours Employment	*3201*
33—Examination, Selection, and Placement	3301
35—Retention Preference, Restoration, and Reemployment	3501

* * * * * * *

SUBPART B—EMPLOYMENT AND RETENTION

CHAPTER 31—AUTHORITY FOR EMPLOYMENT

Section

3101. General authority to employ.
3102. Employment of readers for blind employees.
3103. Employment at seat of Government only for services rendered.
3104. Employment of specially qualified scientific and professional personnel.
3105. Appointment of hearing examiners.
3106. Employment of attorneys; restrictions.
3107. Employment of publicity experts; restrictions.
3108. Employment of detective agencies; restrictions.
3109. Employment of experts and consultants; temporary or intermittent.
3110. Employment of relatives; restrictions.

§ 3101. General authority to employ

Each Executive agency, military department, and the government of the District of Columbia may employ such number of employees of the various classes recognized by chapter 51 of this title as Congress may appropriate for from year to year. (Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 414.)

* * * * * * *

CHAPTER 32—FLEXIBLE HOURS EMPLOYMENT

Sec.

3201. Definitions.
3202. Policy.
3203. Flexible hours employment percentage minimums; waiver.
3204. Implementation.
3205. Limitations.
3206. Personnel ceilings.
3207. Nonapplicability.

§ 3201. Definitions

For the purpose of this chapter—

(1) "agency" means an Executive agency other than any agency referred to in section 5102(a)(1)(i)–(viii) of this title;

(2) "flexible hours employment" means part-time employment of at least 16 hours but not more than 30 hours a week, including, as for example, 4 hours each work day, 5 hours each work day, a different number of hours each work day, or 2, 3, or 4 days a week, jobsharing arrangements or such other arrangements as the Civil Service Commission establishes as consistent with the policy prescribed by section 3202 of this title, but does not include an employee who is employed on a temporary or intermittent basis; and

(3) "grade" means any grade referred to in chapter 51 (other than grades GS–16, GS–17, and GS–18) or subchapter IV of chapter 53 of this title.

§ 3202. Policy

"It is the policy of the Government of the United States that at least a certain percentage of all positions in each grade in each agency

shall be available on a flexible hours employment basis to individuals who are unable, or do not desire, to work on a full-time basis.

§ 3203. Flexible hours employment percentage minimums; waiver

(a) Not later than one year after the date of enactment of this chapter, at least 2 percent of all positions in each grade of each agency shall be available to individuals on a flexible hours employment basis. Not later than 2 years after the date of enactment of this chapter, 4 percent of such positions shall be available on such a basis. Not later than 3 years after the enactment of this chapter, 6 percent of such positions shall be available on such a basis. Not later than 4 years after the date of enactment of this chapter, 8 percent of such positions shall be available on such a basis. Not later than 5 years after the date of enactment of this chapter, and thereafter, 10 percent of such positions shall be available on such a basis.

(b) Upon the request of an agency, the Civil Service Commission may waive or reduce the percentage minimum applicable to any year referred to in subsection (a) for positions in a grade of an agency for a period of not to exceed one year if—

(1) the Commission finds that compliance with the percentage minimum for those positions in that grade for that period by such agency would be substantially disruptive of the ability of the agency to perform its mission; and

(2) notice of the request for a waiver or reduction and the reasons and justification for that request have been published in the Federal Register and interested parties have been afforded not less than 60 days to submit comments to the Commission.

(c) A decision of the Commission to waive or reduce any such percentage minimum shall include the reasons and justification therefor. Copies of each such decision shall be available to the public during normal business hours at each location at which the Commission has offices. Upon request, a copy of a decision shall be furnished without charge.

(d) Notwithstanding any other provision of law, any such decision of the Commission is a final agency action within the meaning of chapter 7 of this title.

§ 3204. Implementation

(a) Each agency shall adopt and maintain procedures, continuously conduct activities and projects, and undertake such other efforts as may be appropriate, to carry out sections 3202 and 3203 (a) of this title. The Civil Service Commission shall promptly formulate and implement, and thereafter supervise, a program to assist agencies in carrying out those sections. Not later than 6 months after the date of enactment of this chapter, the Commission shall report to Congress on actions taken to formulate and implement a program to assist agencies in carrying out those sections.

(b) Not later than January 20, April 20, July 20, and October 20 of each year, each agency shall report to the Commission with respect to the 3 calendar months preceding the month in that particular report is due, on the procedures, activities, projects, and other efforts undertaken to carry out sections 3202 and 3203 (a) of this title. Each report shall contain documentation concerning the extent to which the per-

centage minimums of section 3203 (a) of this title have been met and an explanation of any impediments to their fulfillment and of measures undertaken to remove these impediments.

(c) The Commission shall report annually to the Congress on the procedures, activities, projects, and other efforts undertaken to carry out sections 3202 and 3203(a) of this title. Each annual report shall contain documentation concerning the extent to which the percentage minimums of section 3203(a) of this title have been met and an explanation of any impediments to their fulfillment and of measures undertaken to remove these impediments.

(d) The Commission shall conduct research and experimentation projects and any other activities designed to promote, in public employment, the advancement of opportunities for individuals who are unable, or who do not desire, to work on a full-time basis.

§ 3205. Limitations

(a) An agency shall not abolish a full-time position in a grade subject to this chapter, and occupied by employee, in order to establish 2 or more positions to be made available to individuals on a flexible hours employment basis.

(b) Nothing in this chapter shall impair the employment or employment rights or benefits of any employee.

(c) No agency shall enter into any contract or other agreement with any person as a result of the enactment of this chapter, except with respect to any agreement to furnish advice and assistance to that agency to meet the percentage minimums of section 3203(a) of this title.

(d) No person employed as an expert or consultant under section 3109 of this title, and no person who is employed by any employer other than an agency, may be counted for the purpose of determining whether that agency has met the percentage minimums of section 3203(a) of this title.

§ 3206. Personnel ceilings

In counting the number of employees an agency employs for purposes of any personnel ceiling, an employee employed on a flexible hours employment basis shall be counted as a fraction which is determined by dividing 40 hours into the average number of hours that employee works each week.

§ 3207. Nonapplicability

If, on the date of enactment of this chapter, a collective bargaining agreement is in effect with respect to positions occupied by employees which establishes the number of hours of employment in a week, then this chapter shall not apply to those positions.

* * * * * * *

§ 3502. Order of retention

(a) The Civil Service Commission shall prescribe regulations for the release of competing employees in a reduction in force which give due effect to—

(1) tenure of employment;

(2) military preference, subject to section 3501(a)(3) of this title;

(3) *length of service;* [*and*]
(4) *efficiency or performance ratings*[.]*; and*
(5) *employment on a full-time basis (other than on a temporary or seasonal full-time basis).*

§ 8332. Creditable service

(a) The total service of an employee or Member is the full years and twelfth parts thereof, excluding from the aggregate the fractional part of a month, if any.

* * * * * * *

(2) An employee may deposit with interest an amount equal to retirement deductions representing any period or periods of approved leave without pay while serving, before July 18, 1966, as a full-time officer or employee of an organization composed primarily of employees as defined by section 8331(1) of this title. An employee who makes the deposit shall be allowed full retirement credit for the period or periods of leave without pay. If the employee dies, a survivor as defined by section 8331(10) of this title may make the deposit. If the deposit is not made in full, retirement credit shall be allowed in accordance with the second sentence of subsection (f) of this section.

(*l*) *Notwithstanding any other provision of law, an employee occupying a position on a flexible hours employment basis shall be allowed credit of one month for each 173 hours of work performed for which deductions are made under this subchapter or deposits may be made.*

§ 8347. Administration; regulations

(a) The Civil Service Commission shall administer this subchapter. Except as otherwise specifically provided herein, the Commission shall perform, or cause to be performed, such acts and prescribe such regulations as are necessary and proper to carry out this subchapter.

* * * * * * *

(g) The Commission may exclude from the operation of this subchapter an employee or group of employees in or under an Executive agency whose employment is temporary or intermittent. *However, the Commission may not exclude any employee who occupies a position on a flexible hours employment basis (as defined in section 3201(2) of this title).*

§ 8716. Regulations

(a) The Civil Service Commission may prescribe regulations necessary to carry out the purposes of this chapter.

(b) The regulations of the Commission may prescribe the time at which and the conditions under which an employee is eligible for coverage under this chapter. The Commission, after consulting the head of the agency or other employing authority concerned, may exclude an employee on the basis of the nature and type of his employment or conditions pertaining to it, such as short-term appointment, seasonal, intermittent [or part-time] employment, and employment of like nature. The Commission may not exclude—

(1) an employee or group of employees solely on the basis of the hazardous nature of employment; [or]

(2) a teacher in the employ of the Board of Education of the District of Columbia, whose pay is fixed by section 1501 of title 31, District of Columbia Code, on the basis of the fact that the teacher is serving under a temporary appointment if the teacher has been so employed by the Board for a period or periods totaling not less than two school years[.]; *or*

(3) *an employee who is occupying a position on a flexible hours employment basis (as defined in section 3201(2) of this title).*

§ 8913. Regulations

(a) The Civil Service Commission may prescribe regulations necessary to carry out this chapter.

(b) The regulations of the Commission may prescribe the time at which and the manner and conditions under which an employee is eligible to enroll in an approved health benefits plan described by section 8903 of this title. The regulations may exclude an employee on the basis of the nature and type of his employment or conditions pertaining to it, such as short-term appointments, seasonal or intermittent employment, and employment of like nature. The Commission may not exclude—

(1) an employee or group of employees solely on the basis or the hazardous nature of employment; [or]

(2) a teacher in the employ of the Board of Education of the District of Columbia, whose pay is fixed by section 1501 of title 31, District of Columbia Code, on the basis of the fact that the teacher is serving under a temporary appointment if the teacher has been so employed by the Board for a period or periods totaling not less than two school years[.]; *or*

(3) *an employee who is occupying a position on a flexible hours employment basis (as defined in section 3201(2) of this title).*

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Calendar No. 1090

93D CONGRESS
2d Session

SENATE

REPORT
No. 93-1143

FLEXIBLE HOURS IN THE FEDERAL SERVICE

SEPTEMBER 11, 1974.—Ordered to be printed

Mr. MCGEE, from the Committee on Post Office and Civil Service, submitted the following

REPORT

[To accompany S. 2022]

The Committee on Post Office and Civil Service, to which was referred the bill (S. 2022) To provide increased employment opportunity by Executive agencies of the United States Government for persons unable to work standard working hours, and for other purposes, having considered the same, reports favorably thereon with amendments and recommends that the bill as amended do pass.

PURPOSE

The purpose of S. 2022 is to direct the U.S. Civil Service Commission to formulate, implement, and thereafter supervise a program to assist executive agencies in carrying out a policy to meet the needs of persons unable to work standard working hours. Progress in this direction has already been made, and the Committee wishes to encourage movement in this direction through the legislative process.

BACKGROUND

S. 2022 was introduced by Senator John V. Tunney on June 19, 1973. At a hearing on September 26, 1973, the Committee heard from Members of Congress; the President of Catalyst, a group supported by the Kellogg, Ford, Mellon and Rockefeller Foundations for the purpose of encouraging flexible hours employment; a representative of a national Federal employee organization; and a representative on the Civil Service Commission. The Committee also obtained, by report, the views of the Civil Service Commission, the Comptroller General, the Postal Service, and the Department of Labor and, by letter, the views of the American Federation of Government Employees, the

38-010

American Postal Workers Union, the National Association of Letter Carriers, and the Laborers' International Union of North America.

S. 2022 is cosponsored by 24 Members of the Senate, including five Members of the Committee, Senators Bellmon, Dole, Hollings, Randolph, Moss, and Stevens. On July 9, 1974, the Honorable Francis Sargent, Governor, Commonwealth of Massachusetts, signed into law H. 3167, An Act of the General Court of Massachusetts, the primary provisions of which are substantively identical to those of S. 2022.

BACKGROUND

Part-time employment benefits many groups; women and men who cannot or choose not to work full-time; handicapped people who cannot bear the strains of a long day or cannot handle rush hour traffic; students and individuals undergoing retraining who must be partially or totally self-supporting while in school; and experienced, trained employees who may prefer continuing to work part-time to taking advantage of early retirement. By providing part-time employment opportunities, the Government benefits from a wider talent pool and the experience of older employees.

With six million women in this country with Bachelor of Arts or higher advanced degrees and another nine million who have had some higher education, the talent pool of women is considerable. Part-time employment allows a woman to meet her family responsibilities and, at the same time, pursue a career. The part-time job permits a woman to be with her children when they are pre-schoolers and after school hours during elementary and high school years. By offering part-time jobs, Government agencies will be better able to comply with Federal regulations on equal employment opportunities for women at all levels of responsibility.

The need for increased part-time job apportunities for women is all the more acute since the number of part-time workers is increasing faster than the number of full-time. Between 1950 and 1966, the full-time labor force increased by 20 percent, from 58 to 70 million, while the number of part-time workers increased more than 49 percent, from 10.7 to 18 million.

In 1967, the Bureau of Labor Statistics estimated that by 1980 one worker out of ever seven would be part-time. But the rate of increase in part-time workers has been so great that this figure was reached by the end of 1972 when more than 12.5 million American workers were employed part time.

While the size of the part-time labor force is increasing, the largest employer—the Federal government—has not adequately provided for bringing part-timers into the work force. Including permanent, temporary, and intermittent employees, only 184,358 Federal employees are part-time; less than half of these women. Permanent part-time employees number only 53,684; 25,786 men and 27,898 women.

S. 2022 sets goals for part-time employment so that at least a certain percentage of the positions at each and all levels in all executive agencies shall be available on a flexible-hours employment basis for persons who cannot work or do not desire to work on a full-time basis. The establishment of goals is an established Government policy. The Civil

Service Commission's FPM Letter 713–22, October 4, 1973, provided guidelines for a format for submission of Equal Employment Opportunity (EEO) plans. Section 2(g) states:

> The establishment of numerical goals and timetables is a useful management concept that can significantly enhance EEO plans where the use of such goals will contribute to the resolution of equal employment opportunity levels.

Provisions of the Bill

FLEXIBLE HOURS EMPLOYMENT

S. 2022 encourages flexible hours employment in positions at all grades in executive agencies, including both statutory and Wage Grade positions, but excluding positions in grades GS–16, GS–17, and GS–18. "Flexible hours employment" means employment in positions which normally require at least 16 hours but not more than 30 hours of work per week and includes arrangements involving job sharing, 4-, 5-, or 6-day workdays, jobs which provide 8 hours of employment or less for one, two, three, four, or five days per week and such other arrangements which the Civil Service Commission and the executive agencies find consistent with the maximum provision of employment opportunity to persons unable to work a standard workweek. The bill covers Executive agencies and regulatory agencies subject to the rules of the Civil Service Commission.

FLEXIBLE HOURS EMPLOYMENT TARGETS

It is the Committee's intention that the creation of flexible-hours employment opportunities be undertaken in a gradual fashion which provides maximum protection for the rights, benefits and employment of Federal employees. Accordingly, the bill provides for a gradual phase-in of flexible hours employment, so that, at the end of one year from the date of enactment, unless as otherwise provided in the bill, 2 percent of positions at each level shall be made available on a flexible-hours basis, at the end of 2 years, 4 percent of positions shall be made available on such a basis, at the end of 3 years, 6 percent of positions shall be made available on such a basis, at the end of 4 years, 8 percent of positions shall be made available on such a basis, and at the end of 5 years and for all years thereafter, 10 percent of such positions shall be made available on such a basis.

The term "grade" as used in the bill refers to General Schedule or Wage Grade level. The percentage amount relating to "positions at each grade" refers to the proportion of positions at each grade, except the supergrades, in each executive agency which shall be made available for adaptation to the requirements of flexible-hours employment.

The percentage amounts described in the bill are target rather than rigid quota levels. In some instances, agencies may find that flexible-hours employment is highly suited to their operational requirements and will make the maximum possible use of part-time employment. The Committee recognizes also that the interests of Federal employees and the Government's operational necessities must be protected. The

bill therefore provides a mechanism by which an agency may be partially or fully relieved of its obligation to provide flexible-hours employment in cases where these interests would otherwise be seriously threatened.

PROCEDURE FOR REDUCTION OR WAIVER OF FLEXIBLE-HOURS EMPLOYMENT TARGETS

The Committee recognizes that it may not be possible to provide flexible-hours employment opportunities in any given year at any given level in an executive agency. The bill therefore provides that an agency may request and that the Civil Service Commission may grant, for a period of one year, a reduction or waiver of the percentage amount. The Commission may grant such a reduction or waiver 60 days after publication in the Federal Register of notice of the request for a reduction or waiver and of the reasons and justification for that request. The Commission may grant a reduction or waiver only if the agency demonstrates to the Commission that partial or full compliance with the percentage requirement for those positions for that year by such agency would be substantially disruptive of the ability of the agency to perform its mission.

The bill provides that the Commission shall make available for public inspection a written statement of the facts and logic which provide the basis for its decisions on requests for reductions or waivers. The Committee expects that, in considering such requests, the Commission will afford all interested parties 60 days for the opportunity to comment and that the Commission will carefully examine each request on its individual merits. Upon enactment, the Commission should develop and publish in the Federal Register objective criteria for use in evaluation of requests for reduction or waiver.

The Committee expects that the Commission will carefully balance the national interest in the promotion of flexible-hours employment with the need to protect the employment rights and interests of Federal employees and the need to provide continuous staffing of certain positions in certain agencies. The circumstances under which partial or full compliance with the percentage amounts would be substantially disruptive of the ability of an agency to perform its mission should include, but not be limited to, situations in which an agency is undergoing a substantial reduction in force, a freeze on new hiring or other major personnel action which so adversely affects the status of Federal employees in that agency as to make it impossible to adapt to the requirements of flexible-hours employment without seriously jeopardizing the employment or employment rights or benefits of Federal employees in that agency.

IMPLEMENTATION AND OVERSIGHT

The bill provides for the implementation of the public policy as expressed in the bill by the executive agencies with the advice and assistance of the Civil Service Commission. Periodic reporting by the agencies to the Commission and by the Commission to the Congress would be required on measures taken to implement the policy, on the extent to which the goals of the policy are attained, on any impedi-

ments to implementation of the policy and on measures taken to remove any such impediments. Finally, the bill directs the Commission to conduct research and experimentation projects and other activities which will serve to promote, in public employment, the advancement of opportunities for persons unable to work standard working hours.

The Committee expects that, in addition to implementing the policy expressed in the bill, the Commission will give maximum encouragement to the use of other forms of flexible work scheduling, including the use of variable starting and finishing hours of work.

PROTECTION OF FEDERAL EMPLOYEES

The bill would prohibit any Federal employee from being forced to accept flexible-hours employment as a condition of new or continued employment. It also provides that nothing in the bill would jeopardize the employment or employment rights or benefits of any Federal full-time employee. The gradual phase-in of flexible-hours employment opportunities is designed to protect Federal employees by providing such opportunities under the umbrella of the flexibility afforded by normal attrition. In those specific cases where an agency is undergoing a substantial reduction in force, a freeze on new hiring, or other major personnel action which so adversely affects the status of agency employees as to make it impossible to adapt to the bill's requirements without seriously jeopardizing the employment or employment rights or benefits of employees in that agency, the Committee expects that the Commission will grant a partial reduction in or waiver of the requirements if the Commission finds that such a reduction or waiver is essential to the preservation of the continued employment or the employment rights or benefits of employees in a particular agency.

OTHER PROVISIONS

The bill provides that flexible-hours employees would have entitlement to the same proportionate fringe benefits as those vested in regular-hours employees. An exception to this general rule, regarding retirement creditability, is described below under "Amendments".

The bill provides also that, for purposes of counting persons employed in flexible-hours employment positions toward agency personnel ceilings, such persons must be counted on a pro-rata basis according to the percentage of hours each person works in a typical forty-hour workweek.

The bill provides that no agency shall contract out work as a result of the provisions of this bill, except for the purpose of obtaining advice and assistance needed to meet the requirements of the program.

The bill does not apply in the case of positions occupied by Federal employees with respect to whom a collective-bargaining agreement is in effect between an agency and a labor organization as of the date of enactment. The exemption is limited to those positions occupied by employees for whom the weekly number of hours of employment is determined, as of the date of enactment, by collective-bargaining agreements rather than by statute. Experts, consultants and others employed by any employer other than an executive agency may not be

counted for the purpose of determining compliance with the policy of this bill.

AMENDMENTS

The bill as introduced included within its definition of "executive agency" the Postal Service. The bill as reported excludes the Postal Service from the definition of "executive agency".

The bill as introduced contained no limit on the number of hours per workweek consistent with the concept of flexible-hours employment and no reference to job sharing as an arrangement consistent with the concept of flexible-hours employment. The bill as reported would limit flexible-hours employment to positions of at least 16 hours but not more than 30 hours per week. It would include job sharing among those arrangements consistent with the concept of flexible-hours employment.

The bill as introduced vested enforcement, oversight, and research responsibilities in the Department of Labor. The bill as reported places these responsibilities with the Civil Service Commission.

The bill as introduced allowed the Secretary of Labor to waive the target percentage requirements if he found those requirements impossible of accomplishment. The bill as reported eliminates this provision and substitutes a provision that the Civil Service Commission may, under clearly defined conditions, waive the percentage requirements.

The bill as introduced was silent on the rights of Federal employees with respect to enforcement of this bill, on contracting out of work by agencies in connection with this bill and on coverage of positions in which the number of hours of employment in a week is determined by collective-bargaining agreement rather than by statute. The bill as reported fully ensures the protection of Federal employees, severely limits the contracting out of work by agencies in connection with this bill, and excludes from coverage positions in which the number of hours of employment in a week is determined by an existing collective-bargaining agreement rather than by statute.

As introduced, the bill provided that "at least a certain percentage of all positions in each grade in each agency" shall be available on a flexible-hours basis. The bill as reported excludes grades GS–16, GS–17, and GS–18 from the definition of "grade". The Committee took this action because it believed it would be extremely difficult to administer a program in which flexible-hours positions were required to be included among the supergrades.

The bill as introduced would have allowed time on the job as a flexible-hours employee to be counted, without reduction, in the annuity-computation formula. This would have allowed a part-time employee to work as such for a number of years, transfer to a full-time position to increase the high-three average salary and retire on a disproportionately high annuity in which each month of flexible-hours employment was credited as though the employee had worked full time. The Committee amended the bill by the inclusion of language to allow credit toward a full month's employment only for those hours actually worked. Full-time employees work 2,080 hours per year, or 173 hours per month. Under the amended bill, a flexible-hours employee would be credited with one month toward retirement when he has actually worked 173 hours.

The bill as introduced did not address itself to the order of retention in a reduction in force. Section 3502 of title 5 provides that the Civil Service Commission shall prescribe regulations for the release of competing employees in a reduction in force which gives due effect to (1) tenure of employment, (2) military preference, (3) length of service, and (4) efficiency or performance. The Committee has amended this section to include a fifth consideration: "employment on a full-time basis (other than on a temporary or seasonal full-time basis)". This means that an employee's status as a full-time employee, other than temporary or seasonal, will be taken into account by Civil Service Commission regulations when a reduction-in-force is undertaken.

Cost

Enactment of this legislation will not result in any additional cost to the Government. Experience in the Federal Government and in the private sector clearly indicates that less-than-full time employment generally results in such increased productivity that the minor additional administrative expenses that may be incurred are more than fully offset.

Committee Action

The Committee vote on the bill as amended was unamimous.

Agency Views

Following are the views of the Civil Service Commission, the Department of Labor, the Postal Service, and the Comptroller General of the United States on S. 2022.

U.S. Civil Service Commission,
Washington, D.C., September 25, 1973.

Hon. Gale W. McGee,
Chairman, Committee on Post Office and Civil Service,
U.S. Senate.

Dear Mr. Chairman: This is in further reply to your request for the views of the Civil Service Commission on S. 2022, a bill "To provide increased employment opportunity by executive agencies of the United States Government for persons unable to work standard working hours, and for other purposes".

While we agree with the general purpose of creating as many part-time employment opportunities as possible, the Commission is opposed to this bill.

It is our view that legislation to accomplish the basic objective of the proposal is neither necessary nor desirable. There is now available administrative flexibility that enables Federal executive agencies to employ workers on a part-time basis. This flexibility has been used by agencies for many years to provide employment opportunities for those workers unable to work full-time and also carry out essential functions and workload demands that lend themselves to accomplishment by part-time workers. For example, the Department of Health, Education, and Welfare employs about 2,300 part-time workers and the Department of Agriculture has about 2,100 employees in this same category. The Veterans Administration has some 11,500 part-time workers.

In addition to the fact that legislation is not necessary, we object to the proposal because it would require that a fixed percentage of positions at each and all levels in all executive agencies be set aside for part-time work. This is impractical and would produce many problems. The requirement does not take account of the amount and type of work to be done and would be imposed whether or not such work could best be accomplished by part-time employees. In effect, the bill would severely impair an agency head's ability to manage.

The bill would require that some jobs now filled on a full-time basis be converted eventually to part-time. This would be more costly because of additional overhead expenses and would result in inefficient operations in some work situations. We seriously question whether these undesirable, and unnecessary results are in the public interest.

The proposed employment system also ignores the fact that large blocks of Federal jobs do not lend themselves to being filled on a part-time basis. By way of example, these would include: most supervisory and managerial positions; jobs that require continuity; jobs for which training costs are high and could be prohibitive; for part-time employment; those requiring frequent or extensive travel; and most investigative positions.

Labor market conditions, and fluctuations in labor market conditions completely beyond the control of the Federal government, would in our judgment make it impossible to hire enough well qualified employees in some types of jobs to meet the employment requirements of the bill. Examples of these are: many blue collar and trades positions, especially in areas of highly concentrated blue collar employment; jobs such as Air Traffic Controller, Border Patrol Officer, Park Ranger, and Forester which require specialized experience not readily found among candidates willing to work part-time.

We object also to that feature of the bill which designates the Secretary of Labor as the official responsible for its administration. The Civil Service Commission has general responsibility for employment policies and programs within the Federal government. To the extent that legislation is needed in this program area, and it is not in this instance, the Civil Service Commission should be charged with administrative responsibility.

In conclusion, it should be noted that the Commission encourages agencies to use a variety of techniques, including part-time work assignments, to provide employment for women and men whose family or other personal responsibilities do not permit full-time employment. While the Commission agrees with the general purpose of the bill as stated, we cannot agree with the establishment of this type of arbitrary numerical employment standard.

The Office of Management and Budget advises that from the standpoint of the administration's program there is no objection to the submission of this report.

By direction of the Commission:

Sincerely yours,

ROBERT E. HAMPTON, *Chairman.*

U. S. DEPARTMENT OF LABOR,
OFFICE OF THE SECRETARY,
Washington, November 16, 1973.

HON. GALE W. MCGEE,
Chairman, Committee on Post Office and Civil Service, U.S. Senate,
Washington, D.C.

DEAR MR. CHAIRMAN: This is in response to your request for the Department of Labor's views on S. 2022, the Flexible Hours Employment Act, a bill "To provide increased employment opportunity by executive agencies of the United States Government for persons unable to work standard working hours, and for other purposes."

S. 2022 would provide that a fixed quota of part-time positions be set aside in an "executive agency" and would provide that part-time employees, on a pro rata basis, receive all benefits normally available to full-time employees in a similar position or grade. Such employment would not be counted towards determining an executive agency's personnel ceiling requirements, other than on a pro rata basis. Section 3 of the bill would authorize the Secretary of Labor to conduct research and experimentation projects to promote part-time employment in the public and private sector. The bill would impose fixed percentages, starting at 2% and rising to 10% after five years of positions to be filled on a part-time basis at each and all levels in the Departments and Agencies. The bill is designed to increase employment opportunities for working mothers, students, older persons, and the handicapped. Although we support these objectives, we do not believe that legislation is necessary to accomplish them, and accordingly, we cannot support S. 2022.

With respect to administration of the Act, we question first the requirement that the Department of Labor be responsible for administering the program. The matter of hours of work in the Federal Service is clearly within the sphere of responsibility of the Civil Service Commission.

We believe it is unrealistic and unwise to require that a fixed minimum number or percentage of positions be reserved for employment on a flexible hours of employment basis. Such a requirement impinges upon the Agency Head's responsibility for management and fails to reflect the fact that the proportion of jobs amenable to part-time performance will vary among agencies.

The Department does not believe that new legislation is needed for research projects contemplated by section 3. There is adequate authority and flexibility under present law for such projects, and it is already the official policy of the Executive Branch to promote increased use of part-time employment where appropriate.

Indeed, the Department of Labor plans to undertake a study of jobs and functions within our agency such as that envisioned by section 3 of the bill. Some part-time work at both clerical and professional levels is available under current law, and we expect that further investigation will show that it is possible to draw more effectively on highly qualified personnel available on a part-time basis. Moreover, the Department will explore ways of increasing part-time job oppor-

tunities in the private sector under the various programs we administer.

The Office of Management and Budget advises that there is no objection to submission of this report from the standpoint of the Administration's program.

Sincerely,

PETER J. BRENNAN,
Secretary of Labor.

U.S. POSTAL SERVICE,
LAW DEPARTMENT,
Washington, D.C., September 25, 1973.

Hon. GALE W. MCGEE,
Chairman, Committee on Post Office and Civil Service, U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: This is in response to your request for the views of the Postal Service on S. 2022, the proposed "Flexible Hours Employment Act". This bill would require each executive agency of the United States Government, including the United States Postal Service, to make an increasing percentage of positions available on a part-time basis for persons who cannot work or do not desire to work full time.

We oppose the application of this bill to the Postal Service, because it would interfer with collective bargaining between postal management and organizations of postal employees.

In general, the Postal Reorganization Act patterned labor-management relations in the Postal Service after those existing in the private sector of the economy under the National Labor Relations Act. Chapter 12, title 39, United States Code, provides for the establishment and recognition of bargaining units of postal employees and for the negotiation of collective-bargaining agreements between these bargaining units and postal management. Moreover, Congress expressed an intent that postal collective bargaining should cover the full gamut of issues negotiated by labor and management in the private sector of the economy. In its report on the Postal Reorganization Act, the House Committee on Post Office and Civil Service said:

> * * * Rank and file postal employees would, for the first time, have a statutory right to organize collectively and to bargain collectively with management on all of those matters—including wages and hours—which their neighbors in private industry have long been able to bargain for.
> H.R. Rept. No. 91–1104, 91st Cong., 2d Sess., 13–14 (1970).

The employment of part-time workers has long been a matter for negotiation in private labor relations, because such workers often occupy jobs which might otherwise be filled by union members employed on a permanent basis. Similarly, both postal unions and postal management have taken aggresive bargaining positions on what number of part-time postal workers should be hired and what positions they should fill. The current contract provisions, achieved as a compromise between union and management views, direct that 90% of postal craft employees must be hired on a full-time permanent basis.

We feel that it would be entirely inconsistent with the legislative purposes of the Postal Reorganization Act to restrict the scope of the issue of part-time employment as a subject for collective bargaining in the Postal Service. Although the policies that would be established by S. 2022 may be commendable, we would oppose their application to the Postal Service unless a decision is made to make such policies applicable to employees in the private sector who bargain with their employees. Accordingly, we oppose the enactment of S. 2022, in its present form, and urge that it be amended so as to make it inapplicable to the Postal Service.

Sincerely,

LEWIS J. COX,
General Counsel.

COMPTROLLER GENERAL OF THE UNITED STATES,
Washington, D.C., September 11, 1973.

Hon. GALE W. MCGEE,
Chairman, Committee on Post Office and Civil Service, U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: We refer to your letter of June 29, 1973, requesting our views and comments on S. 2022, 93d Congress, which, if enacted, would provide increased employment opportunity within executive agencies of the United States Government for persons unable or not wishing to work standard working hours and would be cited as the "Flexible Hours Employment Act."

Section 1(1) of the bill defines "executive agency" as an executive department, a Government corporation and an independent establishment (including the United States Postal Service) apparently in accordance with those terms as set forth in sections 101, 103 and 104 of title 5, United States Code. Presumably the military departments as defined in section 102, *supra*, are also intended to be encompassed within the scope of the bill. To remove any doubt in this respect you may wish to specifically include a military department in the term "executive agency" as defined in section 1(1) of the bill.

Section 2(a) of the bill proposes as a policy that all executive agencies shall make positions available at each and all levels on a flexible hours or part-time employment basis for persons who cannot or do not desire to work full time "unless adjudged impossible" by the Secretary of Labor. The bill requires that these positions be made available in annual increments of at least 2 per centum of positions at each and all levels starting one year after enactment until 10 per centum of such positions shall have been made available for flexible hours employment not later than 5 years after the date of enactment.

Responsibility for monitoring achievement of part-time employment goals required by the bill would be assigned to the Secretary of Labor. Each agency would report quarterly to the Secretary on progress made on the program and the Secretary would be required to report annually to Congress on efforts undertaken to meet the percentage goals and reasons for failure to do so where pertinent.

The existing law governing hours of work for Government employees is contained in section 6101 of title 5, U.S.C., and reads in pertinent part as follows:

§ 6101. Basic 40-hour workweek; work schedules, regulations

(a)(1) For the purpose of this subsection, 'employee' includes an individual employed by the government of the District of Columbia, but does not include an employee or individual excluded from the definition of employee in section 5541(2) of this title.

(2) The head of each Executive agency, military department, and of the government of the District of Columbia shall—

(A) establish a basic administrative workweek of 40 hours for each full-time employee in his organization; and

(B) require that the hours of work within that workweek be performed within a period of not more than 6 of any 7 consecutive days.

(3) Except when the head of an Executive agency, a military department, or of the government of the District of Columbia determines that his organization would be seriously handicapped in carrying out its functions or that costs would be substantially increased, he shall provide, with respect to each employee in his organization, that—

(A) assignments to tours of duty are scheduled in advance over periods of not less than 1 week;

(B) the basic 40-hour workweek is scheduled on 5 days, Monday through Friday when possible, and the 2 days outside the basic workweek are consecutive;

(C) the working hours in each day in the basic workweek are the same;

(D) the basic nonovertime workday may not exceed 8 hours;

* * * * * * *

(c) The Civil Service Commission may prescribe regulations, subject to the approval of the President, necessary for the administration of this section insofar as this section affects employees in or under an Executive agency.

The above-quoted statute provides for a 40-hour administrative workweek, consisting of 5 eight-hour days, normally running from Monday through Friday. However, the law does not make it a mandatory requirement that every employee work 40 hours per week. The Civil Service Commission (CSC) in implementing the aforementioned statute has made provisions for a workweek of less than 40 hours for part-time employees by defining "Regularly Scheduled Administrative Workweek" in 5 CFR 610.102(b) as follows:

(b) "Regularly scheduled administrative workweek," for full-time employees, means the period within an administrative workweek established in accordance with § 610.111, within which these employees are required to be on duty regularly. For part-time employees, it means the officially prescribed days and hours within an administrative workweek during which these employees are required to be on duty regularly.

It is the policy of the Federal Government to encourage appropriate part-time employment as expressed in section B-4, Appendix B, Chapter 312, of the Federal Personnel Manual:

§ *6101. Basic 40-hour workweek; work schedules, regulations*

(a) (1) For the purpose of this subsection, 'employee' includes an individual employed by the government of the District of Columbia, but does not include an employee or individual excluded from the definition of employee in section 5541 (2) of this title.

(2) The head of each Executive agency, military department, and of the government of the District of Columbia shall—

(A) establish a basic administrative workweek of 40 hours for each full-time employee in his organization; and

(B) require that the hours of work within that workweek be performed within a period of not more than 6 of any 7 consecutive days.

(3) Except when the head of an Executive agency, a military department, or of the government of the District of Columbia determines that his organization would be seriously handicapped in carrying out its functions or that costs would be substantially increased, he shall provide, with respect to each employee in his organization, that—

(A) assignments to tours of duty are scheduled in advance over periods of not less than 1 week;

(B) the basic 40-hour workweek is scheduled on 5 days, Monday through Friday when possible, and the 2 days outside the basic workweek are consecutive;

(C) the working hours in each day in the basic workweek are the same;

(D) the basic nonovertime workday may not exceed 8 hours.

* * * * * * *

(c) The Civil Service Commission may prescribe regulations, subject to the approval of the President, necessary for the administration of this section insofar as this section affects employees in or under an Executive agency.

The above-quoted statute provides for a 40-hour administrative workweek, consisting of 5 eight-hour days, normally running from Monday through Friday. However, the law does not make it a mandatory requirement that every employee work 40 hours per week. The Civil Service Commission (CSC) in implementing the aforementioned statute has made provisions for a workweek of less than 40 hours for part-time employees by defining "Regularly Scheduled Administrative Workweek" in 5 CFR 610.102(b) as follows:

(b) "Regularly scheduled administrative workweek," for full-time employees, means the period within an administrative workweek, established in accordance with § 610.111, within which these employees are required to be on duty regularly. For part-time employees, it means the officially prescribed days and hours within an administrative workweek during which these employees are required to be on duty regularly.

It is the policy of the Federal Government to encourage appropriate part-time employment as expressed in section B-4, Appendix B, Chapter 312, of the Federal Personnel Manual:

B–4. Fostering appropriate part-time employment

The Office of Management and Budget and the Civil Service Commission have strongly urged that Government agencies make employment available to women who can work only part-time; to the physically handicapped, some of whom cannot work full time; to persons who want to work only part-time because of their desire to continue their education; and to other appropriate categories. If executive agencies wish to move along similar lines, they will find the Office of Management and Budget administers the ceilings in a way that permits and encourages the kind of flexibility that results in improved efficiency and productivity.

We have no information as to the desirability of assigning to the Secretary of Labor the responsibility for formulating, implementing and supervising a program to assist executive agencies in carrying out the flexible hours employment policy as required by section 2. However, in view of the statutory authority of the CSC to regulate hours of work cited above it would appear that the responsibilities assigned to the Secretary of Labor by the bill may duplicate or conflict with those of the CSC. Also for consideration are the broad authorities delegated to the CSC to administer the Civil Service System in such areas as (1) employment and retention of employees under chapter 31 of title 5, U.S.C., and Executive orders implementing these statutes; and (2) examination, selection and placement of employees under chapter 33 of title 5, *supra*, and Executive orders implementing these statutes; and (3) pay and allowances of employees and classification of positions under chapter 51 of title 5, *supra*. In light of authority already exercised by the CSC, it would seem more appropriate to place the responsibilities imposed by the bill in the CSC or jointly in the CSC and the Secretary of Labor.

Section 3 of the bill assigns responsibility for administration of its provisions specifically to the Employment Standards Administration or a similar organizational unit of the Department of Labor. In addition to the program for designating certain percentages of Government positions as part time the bill also requires the Employment Standards Administration to develop programs to expand opportunities for part-time employment in private industry. With respect to this provision we suggest that such a statutory designation may unduly limit administrative flexibility and that the determination as to the organizational unit best suited to execute the program should be left to the judgment of the Secretary.

Section 5 of the bill provides that employees in flexible hours employment positions shall receive on a pro rata basis "all benefits normally available to full-time employees of executive agencies in similar position and grade." However, the bill does not specify with particularity just what these benefits are, and neither does it specifically vest authority in any designated agency to regulate such benefits. Under existing law the CSC has been delegated the responsibility of regulating in most fringe benefit areas including authority to exclude from such benefits certain classes of employees. For example, specific authority has been delegated to the CSC to regulate such entitlements as leave in 5 U.S.C. 6311; retirement, 5 U.S.C. 8347; life insurance,

5 U.S.C. 8716; health insurance, 5 U.S.C. 8913; severance pay, 5 U.S.C. 5595 as implemented by Executive Order 11257; and back pay, 5596(c). Therefore, in order to avoid conflicts in jurisdiction, we suggest the bill be amended so that the fringe benefits authorized for employees covered thereunder will be granted under regulations of the CSC or such other agency as presently has jurisdiction of the particular benefit involved.

Section 6 of the bill proposes that agencies count an employee employed in a flexible hours position for purposes of personnel ceiling requirements on a pro rata basis according to the percentage of hours such employee works in each 40-hour workweek. The existing Office of Management and Budget policy with respect to agency personnel ceiling requirements on counting part-time employees is set forth in sections B–2 and B–3, Appendix B to Chapter 312, Federal Personnel Manual, 1969 edition, as follows:

B–2. Ceilings as controls

(*a*) Two kinds of ceilings are established. These are (1) full-time permanent employment and (2) total employment. By subtracting (1) from (2) the difference, called a 'derived ceiling', becomes, in effect, a limitation on the number of part-time, temporary, and intermittent employees. Since all ceilings apply to the last day of each fiscal year, June 30, the agencies have flexibility in applying these ceilings, within the year, particularly with respect to the nonfull-time employment.

(*b*) All employment is subject either to the actual full-time employment ceiling or to the derived ceiling. All employees in each category of employment must be included in the monthly employment reports which are furnished to the Congress and which the Committees of the Congress, the President, and the Office of Management and Budget use to monitor administration of the ceiling requirements.

(*c*) Most agencies understand clearly how requests for revisions in employment ceilings must be submitted to the Office of Management and Budget and what thorough justification must be advanced to support an asserted need for additional employment. (See OMB Circular A–64 and its revisions.) Misunderstanding has, however, arisen from time to time with respect to part-time employment.

(*d*) For purposes of this discussion, a part-time employee, regardless of the nature of his or her employment, is one who works less than 40 hours a week. The employment may be regular and recurring (loosely referred to as 'permanent'); it may be for a temporary period; or it may be intermittent in the sense that the person works only when called in, but it is still the kind of employment which is subject to the derived ceiling.

B–3. Ceiling spaces to meet needs for part-time employees

(*a*) The Office of Management and Budget states that if persons seeking regular, permanent, part-time jobs have been told that it is impossible to offer this kind of employment because each position of this kind must be charged against the full-time permanent ceiling, they have been incorrectly advised. The first course of action that an

agency should always explore is to determine whether the assigned total employment ceilings are large enough to accommodate a desired part-time program. Part-time employees can be hired against vacancies in the derived ceiling as well as against vacancies in the full-time permanent ceiling. These hirings against vacancies can be carried out without recourse to the Office of Management and Budget.

(*b*) If however, the derived ceiling is not high enough to meet an agency's legitimate needs for part-time employment, an attempt should be made to accommodate the part-time employee within the full-time permanent ceiling. If this accommodation is not possible, an application to the Office of Management and Budget for the conversion of spaces from the full-time permanent ceiling to the derived ceiling to permit splitting full-time jobs "would normally receive favorable consideration upon request." In other words, the application of the ceiling need not always force an agency to count a part-time employee as the equivalent of a full-time employee or reduce the total man-hours of employment available to an agency."

We believe that a rigid designation of prescribed percentages of each and *all levels* of positions in the executive branch of the Government as flexible hours positions would prove to be an administratively impractical approach to the objectives of insuring that professional, technical, clerical, supervisory and support positions are freely available to part-time workers. We note that as of April 30, 1973, there were 2,732,023 positions in the executive branch of the Government (Federal Civilian Manpower Statistics, United States Civil Service Commission, June 1973), of which 2,432,350 were permanent full-time positions and 129,322 were part-time, regularly scheduled positions. Since the numbers and grade levels of this magnitude of positions located in all 50 states and numerous foreign countries is subject to constant variation we believe it is not feasible to require, as S. 2022 proposes, that at all times a specified percentage of each level of all positions be designated and set aside for part-time employment.

Sincerely yours,

PAUL G. DEMBLING,
(*For the Comptroller General of the United States*).

CHANGES IN EXISTING LAW

In compliance with subsection 4 of rule XXIX of the Standing Rules of the Senate, changes in existnig law made by the bill as reported are shown as follows (existing law in which no change is proposed is shown in roman; existing law proposed to be omitted is enclosed in black brackets; new matter is shown in italic):

TITLE 5, UNITED STATES CODE

PART III—EMPLOYEES

SUBPART A—GENERAL PROVISIONS

Chapter	Section
21—Definitions	2101
29—Commissions, Oaths, Records, and Reports	2901

SUBPART B—EMPLOYMENT AND RETENTION

Chapter		Section
31	Authority for Employment	3101
32	*Flexible Hours Employment*	*3201*
33	Examination, Selection, and Placement	3301
35	Retention Preference, Restoration, and Reemployment	3501

* * * * * * *

SUBPART B—EMPLOYMENT AND RETENTION

CHAPTER 31—AUTHORITY FOR EMPLOYMENT

Section

3101. General authority to employ.
3102. Employment of readers for blind employees.
3103. Employment at seat of Government only for services rendered.
3104. Employment of specially qualified scientific and professional personnel.
3105. Appointment of hearing examiners.
3106. Employment of attorneys; restrictions.
3107. Employment of publicity experts; restrictions.
3108. Employment of detective agencies; restrictions.
3109. Employment of experts and consultants; temporary or intermittent.
3110. Employment of relatives; restrictions.

§ 3101. General authority to employ

Each Executive agency, military department, and the government of the District of Columbia may employ such number of employees of the various classes recognized by chapter 51 of this title as Congress may appropriate for from year to year. (Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 414.)

* * * * * * *

CHAPTER 32—FLEXIBLE HOURS EMPLOYMENT

Sec.

3201. Definitions.
3202. Policy.
3203. Flexible hours employment percentage minimums; waiver.
3204. Implementation.
3205. Limitations.
3206. Personnel ceilings.
3207. Nonapplicability.

§ 3201. Definitions

For the purpose of this chapter—

(1) "agency" means an Executive agency other than any agency referred to in section 5102(a)(1)(i)–(viii) of this title;

(2) "flexible hours employment" means part-time employment of at least 16 hours but not more than 30 hours a week, including, as for example, 4 hours each work day, 5 hours each work day, a different number of hours each work day, or 2, 3, or 4 days a week, jobsharing arrangements or such other arrangements as the Civil Service Commission establishes as consistent with the policy prescribed by section 3202 of this title, but does not include an employee who is employed on a temporary or intermittent basis; and

(3) "grade" means any grade referred to in chapter 51 (other than grades GS–16, GS–17, and GS–18) or subchapter IV of chapter 53 of this title.

§ 3202. Policy

"It is the policy of the Government of the United States that at least a certain percentage of all positions in each grade in each agency

shall be available on a flexible hours employment basis to individuals who are unable, or do not desire, to work on a full-time basis.

§ 3203. Flexible hours employment percentage minimums; waiver

(a) Not later than one year after the date of enactment of this chapter, at least 2 percent of all positions in each grade of each agency shall be available to individuals on a flexible hours employment basis. Not later than 2 years after the date of enactment of this chapter, 4 percent of such positions shall be available on such a basis. Not later than 3 years after the enactment of this chapter, 6 percent of such positions shall be available on such a basis. Not later than 4 years after the date of enactment of this chapter, 8 percent of such positions shall be available on such a basis. Not later than 5 years after the date of enactment of this chapter, and thereafter, 10 percent of such positions shall be available on such a basis.

(b) Upon the request of an agency, the Civil Service Commission may waive or reduce the percentage minimum applicable to any year referred to in subsection (a) for positions in a grade of an agency for a period of not to exceed one year if—

(1) the Commission finds that compliance with the percentage minimum for those positions in that grade for that period by such agency would be substantially disruptive of the ability of the agency to perform its mission; and

(2) notice of the request for a waiver or reduction and the reasons and justification for that request have been published in the Federal Register and interested parties have been afforded not less than 60 days to submit comments to the Commission.

(c) A decision of the Commission to waive or reduce any such percentage minimum shall include the reasons and justification therefor. Copies of each such decision shall be available to the public during normal business hours at each location at which the Commission has offices. Upon request, a copy of a decision shall be furnished without charge.

(d) Notwithstanding any other provision of law, any such decision of the Commission is a final agency action within the meaning of chapter 7 of this title.

§ 3204. Implementation

(a) Each agency shall adopt and maintain procedures, continuously conduct activities and projects, and undertake such other efforts as may be appropriate, to carry out sections 3202 and 3203 (a) of this title. The Civil Service Commission shall promptly formulate and implement, and thereafter supervise, a program to assist agencies in carrying out those sections. Not later than 6 months after the date of enactment of this chapter, the Commission shall report to Congress on actions taken to formulate and implement a program to assist agencies in carrying out those sections.

(b) Not later than January 20, April 20, July 20, and October 20 of each year, each agency shall report to the Commission with respect to the 3 calendar months preceding the month in that particular report is due, on the procedures, activities, projects, and other efforts undertaken to carry out sections 3202 and 3203 (a) of this title. Each report shall contain documentation concerning the extent to which the per-

centage minimums of section 3203 (a) of this title have been met and an explanation of any impediments to their fulfillment and of measures undertaken to remove these impediments.

(c) The Commission shall report annually to the Congress on the procedures, activities, projects, and other efforts undertaken to carry out sections 3202 and 3203(a) of this title. Each annual report shall contain documentation concerning the extent to which the percentage minimums of section 3203(a) of this title have been met and an explanation of any impediments to their fulfillment and of measures undertaken to remove these impediments.

(d) The Commission shall conduct research and experimentation projects and any other activities designed to promote, in public employment, the advancement of opportunities for individuals who are unable, or who do not desire, to work on a full-time basis.

§ 3205. Limitations

(a) An agency shall not abolish a full-time position in a grade subject to this chapter, and occupied by employee, in order to establish 2 or more positions to be made available to individuals on a flexible hours employment basis.

(b) Nothing in this chapter shall impair the employment or employment rights or benefits of any employee.

(c) No agency shall enter into any contract or other agreement with any person as a result of the enactment of this chapter, except with respect to any agreement to furnish advice and assistance to that agency to meet the percentage minimums of section 3203(a) of this title.

(d) No person employed as an expert or consultant under section 3109 of this title, and no person who is employed by any employer other than an agency, may be counted for the purpose of determining whether that agency has met the percentage minimums of section 3203(a) of this title.

§ 3206. Personnel ceilings

In counting the number of employees an agency employs for purposes of any personnel ceiling, an employee employed on a flexible hours employment basis shall be counted as a fraction which is determined by dividing 40 hours into the average number of hours that employee works each week.

§ 3207. Nonapplicability

If, on the date of enactment of this chapter, a collective bargaining agreement is in effect with respect to positions occupied by employees which establishes the number of hours of employment in a week, then this chapter shall not apply to those positions.

* * * * * * *

§ 3502. Order of retention

(a) The Civil Service Commission shall prescribe regulations for the release of competing employees in a reduction in force which give due effect to—

(1) tenure of employment;

(2) military preference, subject to section 3501(a)(3) of this title;

(3) *length of service;* [*and*]
(4) *efficiency or performance ratings*[.]*; and*
(5) *employment on a full-time basis (other than on a temporary or seasonal full-time basis).*

§ 8332. Creditable service

(a) The total service of an employee or Member is the full years and twelfth parts thereof, excluding from the aggregate the fractional part of a month, if any.

* * * * * * *

(2) An employee may deposit with interest an amount equal to retirement deductions representing any period or periods of approved leave without pay while serving, before July 18, 1966, as a full-time officer or employee of an organization composed primarily of employees as defined by section 8331(1) of this title. An employee who makes the deposit shall be allowed full retirement credit for the period or periods of leave without pay. If the employee dies, a survivor as defined by section 8331(10) of this title may make the deposit. If the deposit is not made in full, retirement credit shall be allowed in accordance with the second sentence of subsection (f) of this section.

(l) Notwithstanding any other provision of law, an employee occupying a position on a flexible hours employment basis shall be allowed credit of one month for each 173 hours of work performed for which deductions are made under this subchapter or deposits may be made.

§ 8347. Administration; regulations

(a) The Civil Service Commission shall administer this subchapter. Except as otherwise specifically provided herein, the Commission shall perform, or cause to be performed, such acts and prescribe such regulations as are necessary and proper to carry out this subchapter.

* * * * * * *

(g) The Commission may exclude from the operation of this subchapter an employee or group of employees in or under an Executive agency whose employment is temporary or intermittent. *However, the Commission may not exclude any employee who occupies a position on a flexible hours employment basis (as defined in section 3201(2) of this title).*

§ 8716. Regulations

(a) The Civil Service Commission may prescribe regulations necessary to carry out the purposes of this chapter.

(b) The regulations of the Commission may prescribe the time at which and the conditions under which an employee is eligible for coverage under this chapter. The Commission, after consulting the head of the agency or other employing authority concerned, may exclude an employee on the basis of the nature and type of his employment or conditions pertaining to it, such as short-term appointment, seasonal, intermittent [or part-time] employment, and employment of like nature. The Commission may not exclude—

(1) an employee or group of employees solely on the basis of the hazardous nature of employment; [or]

(2) a teacher in the employ of the Board of Education of the District of Columbia, whose pay is fixed by section 1501 of title 31, District of Columbia Code, on the basis of the fact that the teacher is serving under a temporary appointment if the teacher has been so employed by the Board for a period or periods totaling not less than two school years[.]; *or*

(3) *an employee who is occupying a position on a flexible hours employment basis (as defined in section 3201(2) of this title).*

§ 8913. Regulations

(a) The Civil Service Commission may prescribe regulations necessary to carry out this chapter.

(b) The regulations of the Commission may prescribe the time at which and the manner and conditions under which an employee is eligible to enroll in an approved health benefits plan described by section 8903 of this title. The regulations may exclude an employee on the basis of the nature and type of his employment or conditions pertaining to it, such as short-term appointments, seasonal or intermittent employment, and employment of like nature. The Commission may not exclude—

(1) an employee or group of employees solely on the basis or the hazardous nature of employment; [or]

(2) a teacher in the employ of the Board of Education of the District of Columbia, whose pay is fixed by section 1501 of title 31, District of Columbia Code, on the basis of the fact that the teacher is serving under a temporary appointment if the teacher has been so employed by the Board for a period or periods totaling not less than two school years[.]; *or*

(3) *an employee who is occupying a position on a flexible hours employment basis (as defined in section 3201(2) of this title).*

○